

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
J. DENTAL LAB, INC.	:	ORDER
	:	DTA NO. 818398
for Revision of a Determination or for Refund of Sales	:	
Use Taxes under Articles 28 and 29 of the Tax Law for	:	
the Period June 1, 1996 through February 28, 1999.	:	

Petitioner, J. Dental Lab, Inc., 241 5th Avenue, Suite 301, New York, New York 10016, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1996 through February 28, 1999.

A hearing was held at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on November 28, 2001 at 11:00 A.M. On January 21, 2002, petitioner made a motion to reopen the hearing in order to permit the introduction of correspondence which substantiates petitioner's position. Based upon petitioner's motion, the Division of Taxation's letter in opposition, and all pleadings, documents and testimony submitted in connection with this matter, Arthur S. Bray, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. On November 28, 2001, a hearing was held on the petition of J. Dental Lab, Inc. The issue presented was whether certain dental supplies which petitioner sold to dentists were subject to sales tax. At the hearing, petitioner presented testimony, documents and real evidence in support of his petition.

2. Near the end of the hearing, petitioner's representative stated that there was no additional testimonial, documentary or other evidence he wished to offer (Transcript, p.94). Later, after certain models were received in evidence, the record was closed (Transcript, p. 100).

3. On January 21, 2002, petitioner made a motion to reopen the hearing in order to permit the introduction of five letters from dentists regarding the nature of the items in issue. Each of the letters is dated after the hearing was held. In support of his motion, petitioner's representative states that the letters substantiate petitioner's position and prove that there has been no deficiency of tax. He also states that he is willing to produce the dentists as witnesses.

4. In opposition to the motion, the Division of Taxation ("Division") states that, in order to maintain a fair and efficient hearing process, it is essential that the hearing process be defined and final and that if the parties are able to submit additional evidence after the record is closed, there is neither definition nor finality. The Division also contends that the submission of evidence after the closing of the record denies it the right to question the evidence on the record. Lastly, the Division notes that the letters may not be considered newly-discovered evidence since they were not in existence at the time of the hearing.

CONCLUSIONS OF LAW

A. The Tax Appeals Tribunal has established a firm policy of not allowing the submission of evidence after the record is closed. In ***Matter of Schoonover*** (Tax Appeals Tribunal, August 15, 1991) a question presented was whether the Administrative Law Judge erred by rejecting exhibits which were attached to the taxpayer's post hearing brief. The Tribunal affirmed the decision to reject the documents and provided the following explanation:

In order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the parties are able to submit additional evidence after the record is closed, there is neither definition nor

finality to the hearing. Further, the submission of evidence after the closing of the record denies the adversary the right to question the evidence on the record. For these reasons we must follow our policy of not allowing the submission of evidence after the closing of the record (*see, Matter of Oggi Rest.*, Tax Appeals Tribunal November 30, 1990; *Matter of Morgan Guar. Trust Co. of N.Y.*, Tax Appeals Tribunal, May 10, 1990; *Matter of International Ore & Fertilizer Corp.*, Tax Appeals Tribunal, March 1, 1990; *Matter of Ronnie's Suburban Inn*, Tax Appeals Tribunal, May 11, 1989; *Matter of Modern Refractories*, Tax Appeals Tribunal, December 15, 1988).

B. It is clear from the forgoing that the letters, which were submitted after the hearing was closed, may not be considered.

C. The motion of J. Dental Lab, Inc. to reopen the record is denied.

DATED: Troy, New York
April 25, 2002

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE